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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,361	03/03/2004	Robert Joseph Panek JR.	TCO1-102US2	4248
23122	7590	07/05/2006	EXAMINER	
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 07/05/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/792,361

Applicant(s)

PANEK, ROBERT JOSEPH

Examiner

Stephen J. Castellano

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3-3-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3-3-04;11-10-05</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, 11, 12, 16-19, 23, 24, 33-35 and 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Sosan.

Re claim 1, Sosan discloses a carrier configured to hold an inner container, the carrier comprising a body adapted to receive an inner container and an elongate arm (push rod 46) coupled to the body through a hood (upper portion 24) for reciprocal extension along an axis of the arm between an extended (door closed) and a retracted (door opened) positions with respect to the body, the arm being adapted for engagement with the door in the upper surface of the inner container, the reciprocal extension of the arm being adapted to reciprocate the door of the inner container in the direction of said axis between opened and closed positions.

The flexible member is a cable (30) and has a tension applying lever (foot pedal 28) pivotally coupled to the body. The biasing member is a spring (52).

Re claims 8, 16, 19 and 33, hood (upper portion 24) is pivotally coupled to the body.

Re claim 33, the arm (push rod 46) has a first portion (the end portion connected to guide rods 50) and a second portion (the longitudinally extending free end) angled at 90 degrees to the first portion and oriented for engagement with a surface of a door with the rotatable hood in the first position. Re claim 34, the free end of the push rod is a pin.

Claims 1-6, 17, 18, 23, 24, and 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Marek.

Re claim 1, Marek discloses a carrier configured to hold an inner container, the carrier comprising a body adapted to receive an inner container and an elongate arm (door 50 and down-turned flange 56) coupled to the body through a hood (cover assembly 38) for reciprocal extension along an axis of the arm between an extended (door closed) and a retracted (door opened) positions with respect to the body, the arm being adapted for engagement with the door in the upper surface of the inner container, the reciprocal extension of the arm being adapted to reciprocate the door of the inner container in the direction of said axis between opened and closed positions.

The flexible member is a cable (58) and has a tension applying lever (foot pedal 70) pivotally coupled to the body. The biasing member is a spring (60 or 62).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 13-15, 20, 22, 25, 27, 36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sosan or Marek.

Re claims 7, 22, 27 and 38, Sosan and Marek disclose the invention except for the locking bracket. Official notice is taken that locking brackets for pivoting levers are well known.

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It would have been obvious to add a locking bracket to prevent the opening of the door or any actuating movement.

Re claims 13-15, 20, 25 and 36, Sosan and Marek disclose the invention except for the arm locking member. Official notice is taken that arm locking members are well known. It would have been obvious to add an arm locking member to prevent the opening of the door.

Claims 9, 10, 21, 26 and 37, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sosan.

Sosan discloses the invention except for the hood key lock. Official notice is taken that hood key locks are well known. It would have been obvious to add a hood key lock to prevent the opening of the hood to restrict access to the contents.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 28 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 72 of copending Application No. 09/845976. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined

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application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 29-32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 37-52, 60, 72, 79, 84 and 102 of copending Application No. 09/845976. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of present claim 28 are all present in allowed claim 72, the coiled spring of present claim 29 is well known, the arm locking member of present claim 30 is obvious from allowed claim 50, the hood lock of present claim 31 is obvious from allowed claim 84 and the lever and locking bracket of present claim 32 is obvious from allowed claims 43 and 44.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-27 and 33-42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 37-52, 60, 72, 79, 84 and 102 of copending Application No. 09/845976. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of present claims 1-27 and 33-42 are all found in the allowed claims of the ('976) application, the exception being that


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the inner container and door are not positively claimed. It would have been obvious to remove the inner container and to use the carrier as a container to take full advantage of the carriers inner volume to provide a housing of increased capacity.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc